

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6415

Petition of Gleb Glinka, Chapter 7 Trustee in)
Bankruptcy of Vermont Electric Generation &)
Transmission Cooperative, Inc., for a certificate of)
consent, pursuant to 30 V.S.A. § 109, to transfer a)
hydroelectric generation facility located in Hartland,)
Vermont, to North Hartland, LLC)

and

Petition of North Hartland, LLC for a certificate of)
public good, pursuant to 30 V.S.A. § 231, to own and)
operate the North Hartland Hydroelectric Plant and for)
de minimis regulation)

Order entered: 2/11/2003

**ORDER GRANTING CERTIFICATE OF CONSENT
AND CERTIFICATE OF PUBLIC GOOD**

I. INTRODUCTION

This case concerns the following petitions filed on August 17, 2000, and October 10, 2001: (1) a petition by Gleb Glinka, Chapter 7 Trustee in Bankruptcy ("Trustee") of Vermont Electric Generation & Transmission Cooperative, Inc. ("VEG&T") for approval of the transfer of a hydroelectric facility (the "facility" or "Project") in North Hartland, Vermont, to North Hartland, LLC ("NHL"); (2) a petition by NHL requesting a certificate of public good ("CPG") under 30 V.S.A. Section 231 to own and operate the facility and for *de minimis* regulation; (3) a petition by NHL for approval of a long-term non-levelized power sales agreement with Vermont Electric Power Producers, Inc. ("VEPPI")¹; and (4) a request for approval of an interconnection agreement between NHL and Central Vermont Public Service Corporation ("CVPS").

1. On November 17, 2000, NHL withdrew its initial petition for approval of the proposed Power Sales Agreement with VEPPI (which was designated Docket No. 6416). Docket No. 6416 was dismissed by the Board on December 13, 2000. On October 10, 2001, NHL filed a petition for approval of a new Power Sales Agreement with VEPPI which was incorporated into this docket (Docket No. 6415).

In its petition for a CPG under 30 V.S.A. § 231, NHL asked the Public Service Board ("Board") to rule that the Board's ongoing regulatory oversight will be *de minimis* and, accordingly, impose only the following reporting obligations upon NHL in conjunction with the CPG: (a) NHL will notice the Board of its filings related to its Federal Energy Regulatory Commission ("FERC") license; (b) NHL will notice the Board of its filings at FERC related to its Exempt Wholesale Generator status, and; (c) NHL will notice the Board of its filing at FERC related to market-based rates, if any.

On March 27, 2001, the Vermont Department of Public Service ("DPS") and the Trustee filed an executed Stipulation that addresses issues relating to the transfer of the facility to NHL. On April 23, 2001, NHL and the DPS filed a Stipulation and Agreement that addresses issues between them relating to the issuance of a certificate of public good for NHL to own and operate the North Hartland facility.

On May 1, 2002, NHL asked to withdraw its petition for approval of a long-term non-levelized power sales agreement with VEPPI, as well as its petition for approval of an interconnection agreement between NHL and CVPS. These requests were granted by the Hearing Officer, without prejudice, in an order issued on July 26, 2002. Between the dates that the two stipulations were filed and NHL's withdrawal of two of its petitions, there were numerous status conferences, filings and Hearing Officer orders regarding both the proposed power sales agreement and the proposed interconnection agreement, including: Status Conference Reports on July 6, 2001, October 30, 2001 and April 4, 2002; an Interim Order on December 28, 2001; a Scheduling Order on April 18, 2002; and a Procedural Order Re: Withdrawal of Motions, Party Representation, and Scheduling on July 26, 2002.

Following NHL's withdrawal of its petition for approval of an interconnection agreement with CVPS and withdrawal of its petition for approval of a long-term non-levelized power sales agreement, the parties filed additional comments regarding the remaining pending petitions. On August 19, 2002, NHL filed information with the Board indicating that it was seeking an order from the Federal Energy Regulatory Commission ("FERC") that both a certificate of consent for

the transfer of the facility from the Trustee to NHL and a certificate of public good for NHL to own and operate the facility are not required for the contemplated transactions.²

On September 5, 2002, the Rural Utilities Service ("RUS") of the United States Department of Agriculture filed a letter in support of what RUS characterized as "North Hartland's request for an order from the Board indicating that a certificate of consent and a certificate of public good are not required for the transfer and operations of the Project."

On September 20, 2002, the DPS filed a response to both the NHL and the RUS filings. In this letter, the DPS suggests that the RUS has misinterpreted NHL's August 19, 2002, filing. The DPS correctly points out that the NHL filing is not a motion for the Board to take any action, but rather is another example of the imprecise NHL filings that have caused much of the delay in this docket and that led to the Hearing Officer Order of July 26, 2002, that required NHL to be represented by Vermont counsel in all future proceedings in this docket. The DPS's response also noted changed circumstances related to issues concerning interconnection, power sales, and resumption of operation.³ The DPS asserted that in light of these changed circumstances, the Board should approve the filed stipulations and issue the requested certificate of consent and certificate of public good.

Finally, CVPS, in a filing dated September 24, 2002, stated that it does not object to the issuance of the proposed certificate of consent and certificate of public good as long as it is clear that both in no way "make any findings or conclusions, create any precedent or dispose of any matters with respect to the issues concerning the interconnection of the Station to the CVPS T&D system or the costs, terms or conditions for the wheeling of energy generated by the Station."

2. NHL petition to FERC for a declaratory order, filed August 15, 2002.

3. The DPS now supports resolution of interconnection issues by FERC, it does not object to NHL's current plans to market the output of the facility in the open market with no entitlement to any cost recovery from Vermont ratepayers, and it suggests that NHL's acquisition is the most likely means of returning the project to service.

On November 4, 2002, FERC issued an Order Granting Interventions and Denying Petition for Declaratory Order. In this Order, FERC ruled that the Federal Power Act "does not preclude state review, or even veto, of the conveyance of project property."⁴

Based on the information filed in this docket, I hereby report the following findings to the Board in accordance with 30 V.S.A. § 8.

II. FINDINGS

1. Gleb Glinka is the chapter 7 trustee in bankruptcy of VEG&T, which voluntarily filed a chapter 7 bankruptcy petition in the United States Bankruptcy Court for the District of Vermont in April 1996 (Case No. 96-10335). Trustee pet. at 1.
2. NHL is a Limited Liability Company duly organized and existing under the laws of New Hampshire. NHL pet. of July 28, 2000, Exh. D.
3. The Vermont Secretary of State granted a Certificate of Organization to NHL effective July 19, 2000, authorizing it to conduct business in Vermont. *Id.*
4. FERC Project P-2816-007 ("Project"), the North Hartland Hydroelectric Plant, is a 4,000 kW hydroelectric generating facility located at the North Hartland Flood Control Dam and Reservoir in the Town of Hartland, Vermont. The Project is a peaking plant, generating electricity during peak periods and impounding water during off-peak periods. NHL pet. of July 28, 2000, Exhs. B and C; FERC License P2816.
5. The Board issued the Project a CPG under 30 V.S.A. Section 248, on June 19, 1981, in Docket No. 4527. NHL pet. of July 28, 2000, Exh. A.
6. The Project received a 401 Water Quality Certification from the Vermont Department of Water Resources and Environmental Engineering ("ANR") dated March 18, 1981. NHL pet. of July 28, 2000, Exh. B.
7. The Project was granted a Major 40-year license (P-2816) by FERC dated November 24, 1981. The Project is completely described in the FERC License. NHL pet. of July 28, 2000, Exh. C; FERC License P2816.

4. FERC Order Granting Interventions and Denying Petition for Declaratory Ruling, issued November 4, 2002, at 5.

8. The Project was constructed with loan proceeds provided by RUS, which held a first priority lien on the Project to secure repayment of its loans. Trustee pet. at 2.

9. The Project is interconnected with, and has operated in parallel with, the electrical system of CVPS, since 1985. CVPS currently supplies power to the Project. VEG&T paid indirect costs of the physical interconnection for the Project in 1984, financed by the RUS. The physical interconnection includes: (1) a Project substation at the generation facility site that includes main step-up transformers, an auxiliary transformer, switchgear, breakers, and other protective devices; (2) approximately 600 feet of underground line between the Project substation and the riser pole south of the substation; (3) approximately 4000 feet of 12.5 kV line owned by the Project, reconstructed in an existing New England Telephone and Telegraph Company⁵ right-of-way from the riser pole to CVPS's right-of-way on Clay Hill Road; (4) approximately six miles of reconstructed CVPS distribution line (Line No. 66) with a dedicated three-phase circuit for the Project built above the existing distribution circuit from Clay Hill Road to CVPS's Quechee Substation; (5) expansion to and upgrades of the equipment and structures at the Quechee Substation, including breakers and metering equipment for measuring both the output of the Project and the energy provided to the project by CVPS. NHL Petition of August 17, 2000; VEG&T letter of March 23, 1984.

10. The Project commenced operation in 1985. It ceased operation in 1996 when VEG&T filed a voluntary Chapter 7 Bankruptcy Petition. The Project has remained idle since 1996. *Id.*

11. Upon VEG&T's bankruptcy filing, the directors, trustees and officers of VEG&T resigned. Shortly after, the Bankruptcy Court appointed the Trustee as the trustee of VEG&T's estate. As the representative of VEG&T's bankruptcy estate, the Trustee holds legal title to the property. *Id.*

12. In June 1997, the Bankruptcy Court issued an Order on Stipulated Settlement of Claims in which RUS was authorized to negotiate, with the Trustee's cooperation, the transfer of the Project. *Id.* at 2-3.

5. New England Telephone and Telegraph Company has changed its name to Verizon New England, Inc. d/b/a Verizon Vermont.

13. Contech Development Company, L.L.C. ("Contech"), the Trustee, and RUS executed an Assets Purchase Agreement, dated December 16, 1999 ("APA"). Contech subsequently assigned its rights under the APA to NHL. Subject to obtaining certain regulatory approvals, the APA provides for the transfer of the Project from the Trustee to NHL. *Id.* at 3; Trustee Exh. D.

14. The APA obligates NHL to pay all outstanding municipal property taxes on the Project owed to the town of Hartland, Vermont, as well as all outstanding utility bills owed to CVPS. Trustee pet. at 3.

15. FERC issued an Order Approving Transfer of License for FERC Project P-2816 to NHL on June 27, 2000. NHL pet. of July 28, 2000, Exh. E.

16. In its June 27, 2000 Order, FERC issued findings that: (i) the sale and transfer of the FERC Project P2816-007 to NHL is in the public interest; (ii) that NHL is qualified to hold the license, and; (iii) that NHL is qualified to operate the property under the license. *Id.*

17. FERC Project P2816 is a Qualifying Small Power Production Facility ("Qualifying Facility") certified by FERC pursuant to Title 18 C.F.R. 292.207 (a)(1). NHL pet. of July 28, 2000, Exh. F.

18. NHL has been determined to be an Exempt Wholesale Generator by FERC in findings issued March 7, 2000, pursuant to Section 32 of the Public Utilities Holding Company Act ("PUHCA") of 1935. NHL will own and operate the Project as a Qualifying Facility that will sell electricity only at wholesale. NHL pet. of July 28, 2000, Exh. G.

19. NHL will not own or operate the flood control reservoir, the dam, spillway, and appurtenant structures at the North Hartland Flood Control Dam and Reservoir, all of which are operated, maintained, and inspected by the United States Army Corps of Engineers. NHL pet. of July 28, 2000, Exh. C; FERC License P2816.

20. On March 28, 2001, the Trustee and the DPS filed a Stipulation which settled all issues between the DPS and the Trustee having any bearing on the issuance of the requested certificate of consent to the Trustee by the Board pursuant to 30 V.S.A. § 109. Stipulation dated March 27, 2001.

21. On April 23, 2001, NHL and the DPS filed a Stipulation and Agreement which settles all issues between NHL and the DPS having any bearing on the issuance of the requested

certificate of public good to NHL to own and operate a hydroelectric facility in Vermont.

Stipulation and Agreement dated April 23, 2001.

22. NHL plans to sell all of the output of the Project on the spot markets of the Independent System Operator of New England. NHL letter dated May 1, 2002.

23. To date, NHL has not been able to execute an interconnection agreement with CVPS. Finding No. 9 above and docket record.

III. DISCUSSION

This case has had a long and complicated history due to NHL's uncertainty about the sale of the Project's production and because of NHL's inability to reach an interconnection agreement with CVPS, the interconnected utility. As discussed above, NHL has changed its intended purchaser of its production two times during the course of this docket, and it continues to have substantial differences with CVPS about the terms and conditions of the Project's interconnection with CVPS's distribution and transmission systems. Consequently, so long as NHL sought Board approval of both a possible power sales agreement and an interconnection agreement with CVPS as part of this docket, it has not been possible to bring this proceeding to closure. Now that NHL is no longer seeking Board approval of a power sales agreement, and now that approval of a proposed interconnection agreement is no longer included in this docket, the only remaining issues in this proceeding are the requests for a certificate of consent pursuant to 30 V.S.A. § 109 and a certificate of public good pursuant to 30 V.S.A. § 231.

After consideration of the stipulations between the parties and the other information presented in this docket, I recommend that the Board approve both the Trustee's petition for a certificate of consent to transfer the Project to NHL and NHL's petition for a certificate of public good to own and operate the Project. Both certificates should be issued because there is sufficient information to show that NHL should be able to effectively operate the facility, because the sale to NHL will provide benefits to the state by bringing a renewable energy facility closer to production, and because the sale will result in the repayment of long delinquent taxes to the Town of Hartland, as well as overdue electricity bills to CVPS. NHL, notwithstanding its problems finalizing some details of the Project's operations, still seems to be the entity that can most expeditiously return the Project to service.

Nevertheless, I am still concerned about the lack of an interconnection agreement between NHL and CVPS. The terms and conditions of such an agreement could have a significant impact on CVPS's transmission and distribution system, as well as CVPS's existing customers. While CVPS might not be purchasing the production of the Project, the use of its transmission and distribution facilities and the rates paid for such use, could have a significant impact on those CVPS facilities, as well as on CVPS's customers. Consequently, I will recommend that the Board include conditions in the certificate of consent and the certificate of public good that will prohibit actual operation of the Project until a proposed interconnection agreement with CVPS (or other Vermont utility if so interconnected) has been reviewed and approved by the Board.

Issuance of both the certificate of consent for transfer of the Project to NHL and the certificate of public good for NHL to own and operate the Project are not intended to and do not make any findings or conclusions, create any precedent or dispose of any matters with respect to the issues concerning the interconnection of the Project to the CVPS transmission and distribution systems or the costs, terms or conditions for the wheeling of energy generated by the Project.

IV. CONCLUSION

The transfer of the the Project to NHL, and NHL's ownership and operation of Project, if conditioned as described above, will promote the general good of Vermont pursuant to 30 V.S.A. §§ 109 and 231.

This Proposal for Decision has been served on all parties to this proceeding in accordance with 3 V.S.A. § 811.

Dated at Montpelier, Vermont, this 17th day of December, 2002.

s/Peter B. Meyer

Peter B. Meyer
Hearing Officer

V. BOARD DISCUSSION

Petitioner, North Hartland LLC's ("North Hartland") representative, Mr. Carey, has, in two separate comments, raised an unusual, if somewhat unclear, set of complaints about the Hearing Officer and the proposal for decision in this docket. Accordingly, we have given great attention to the Hearing Officer's proposal for decision along with the comments filed by Central Vermont Public Service Corporation ("CVPS"), the Vermont Department of Public Service ("Department"), and two letters and an e-mail from Mr. Carey.⁶ While the comments of CVPS and the Department include direct responses to particular substantive aspects of the proposal for decision, Mr. Carey's communications present an extraordinarily confusing message about whether North Hartland does or does not support Board issuance of the requested transfer approval and certificate of public good.

For the reasons discussed in detail below, we conclude that the Hearing Officer's recommendations should be adopted. North Hartland petitioned the Board for approval of transfer of a certain hydroelectric facility, FERC Project P-2816-007, to North Hartland and issuance of a certificate of public good to North Hartland under 30 V.S.A. § 231. North Hartland also entered into a stipulation agreeing to issuance of the certificate of public good notwithstanding any questions it might have about the necessity for that certificate. Accordingly, we determine that in adopting the Hearing Officer's recommendations, we grant North Hartland that which it has requested.

History of This Docket

This case concerns efforts to put back into operation a hydroelectric facility ("facility")⁷ located in North Hartland, Vermont, which was owned and operated by Vermont Electric Generation & Transmission Cooperative, Inc. ("VEG&T") prior to VEG&T's bankruptcy.

6. Letter of Geoffrey Commons, filed December 16, 2002; Letter of Morris L. Silver, filed December 16, 2002; Letter of Robert L. Carey, Jr., filed December 18, 2002; E-mail of Robert L. Carey, Jr., to Susan Hudson, dated December 17, 2002.

7. The "facility" is FERC Project P-2816.

Dockets were opened to consider the following petitions:

- (1) Petition of Gleb Glinka, Bankruptcy Trustee ("Trustee"), for approval of the transfer of the facility to North Hartland, LLC ("NHL" or "North Hartland");
- (2) Petition of North Hartland requesting a certificate of public good ("CPG") under 30 V.S.A. § 231;
- (3) Petition of North Hartland requesting approval of a power sales agreement with VEPP, Inc. ("VEPPI"); and
- (4) Petition of North Hartland requesting approval of an interconnection agreement between North Hartland and CVPS.⁸

At the prehearing conference for the dockets held on October 10, 2000, the parties and the Hearing Officer identified several issues that needed to be addressed.

First, in connection with the request for issuance of a CPG, the Hearing Officer questioned whether, and to what extent, the provisions of 30 V.S.A. § 231 and/or the provisions of 30 V.S.A. § 248 were applicable to North Hartland.⁹

Second, in connection with the request for approval of a power sales agreement with VEPPI, both VEPPI and the Department raised concerns. Because North Hartland had proposed in its petition a contract that it had drafted unilaterally (rather than a contract that already had been negotiated with VEPPI), VEPPI needed time to review the proposal in order to determine whether there were any differences that needed resolution.¹⁰

8. This case originally was opened as two dockets; the facility transfer and CPG matters were part of Docket No. 6415, and the power sales agreement and interconnection matters were part of Docket No. 6416. However, on November 17, 2000, NHL withdrew its initial petition for approval of the proposed Power Sales Agreement with VEPPI. In response to a request from the petitioner, Docket No. 6416 was then closed, and all remaining issues were transferred and merged into Docket No. 6415. Order of 12/13/00.

On October 10, 2001, NHL filed, as part of this docket, a new petition for approval of a new Power Sales Agreement with VEPPI. However, on May 1, 2002, NHL withdrew its petition for approval of a power sales agreement with VEPPI and its petition for approval of an interconnection agreement. Thus, after May 1, 2002, the only petitions left pending before the Board were the petitions requesting approval for transfer of the facility and issuance of the CPG.

9. Tr. 10/10/00 at 16-17.

10. Tr. 10/10/00 at 36-37.

Third, the Department and North Hartland were in clear disagreement about how to calculate the "avoided cost rate" that North Hartland would be paid for power sold to VEPPI pursuant to the proposed power sales agreement.

Fourth, CVPS questioned whether a FERC open access transmission tariff ("OATT") is applicable to transmission of the facility's power over CVPS wire(s) extending from the point of interconnection between the facility and CVPS to recipients of the facility's power under a VEPPI (Rule 4.100) power purchase agreement.

Fifth, at the prehearing conference, issues were identified pertaining to the proposed interconnection agreement. CVPS and North Hartland disagreed about whether a FERC OATT is applicable to transmission of the facility's power over a portion of the wire(s) extending between the facility and CVPS' Quechee substation. Underlying this disagreement was dispute about the location of the point of interconnection between the facility and CVPS.

Sixth and finally, North Hartland questioned whether an interconnection agreement with CVPS was needed at all, in light of the prior interconnection arrangements between CVPS and VEG&T as well as the fact that physical interconnection already exists through which CVPS provides electric service to the facility.¹¹

Throughout the pendency of this docket, the parties (particularly North Hartland) have made numerous filings and representations related to resolution of each of the above issues. On April 23, 2001, North Hartland and the Department filed a stipulation agreeing to issuance of a CPG under 30 V.S.A. § 231, assuring the CPG would be in place, if required.

The issues pertaining to the power purchase agreement with VEPPI were addressed in numerous filings, and during the status conferences held in this docket. North Hartland periodically advised the Board of its position that some or all of the issues related to the proposed power purchase agreement were matters of federal law that should be adjudicated at the FERC or in federal court. Indeed, during the pendency of this docket, North Hartland made numerous

11. In addition, though not discussed at the prehearing conference, the petition requesting authorization for transfer of the facility from the Trustee to North Hartland raised the question whether Board consent to the transfer, in fact, was required. Notwithstanding this question, the Trustee and the Department entered into a stipulation agreeing that the Board should issue a certificate of consent for this transfer. Stipulation filed March 28, 2001, at pp. 4 and 5.

filings and requests at the FERC, many of which requested rulings on the same issues already open before the Board in this docket.¹² Although, periodically, North Hartland and VEPPI represented that a negotiated contract would be presented to the Board for approval, North Hartland's initial request for approval of a Rule 4.100 contract (filed on August 17, 2000) was withdrawn on November 17, 2000.¹³ Similarly, North Hartland filed a second proposed power purchase contract between North Hartland and VEPPI on October 10, 2001, but then withdrew it on May 1, 2002. Thus, the issues raised at the prehearing conference relating to VEPPI power purchase contracts are not now before us in this docket.

The issues pertaining to the interconnection agreement with CVPS were addressed in numerous filings and during the status conferences held in this docket. Again, North Hartland repeatedly claimed that some or all of the issues related to the proposed interconnection agreement were matters of federal law that should be adjudicated at the FERC or in federal court. Again, North Hartland made numerous filings and requests at the FERC, some of which requested rulings on the same issues already open before the Board in this docket.¹⁴

On December 28, 2001, the Hearing Officer issued an interim order that addressed the issues of the location of the point of interconnection and the applicability of a FERC open access transmission tariff to transmission of the facility's power over a portion of the wire(s) extending between the facility and CVPS' Quechee substation.¹⁵ During the pendency of this docket, CVPS and North Hartland each have filed different proposed interconnection agreements in this docket. On May 1, 2002, North Hartland withdrew its request for Board approval of an interconnection agreement with CVPS. Thus, no proposed interconnection agreement between North Hartland and CVPS is now before us.

12. The FERC has rejected some of these filings. Letter of Mohammad Akbar, Acting Director, Division of Hydropower Administration and Compliance at FERC, June 5, 2002; FERC Order Granting Interventions and Denying Petition for Declaratory Order, November 4, 2002; FERC Order Denying Rehearing, January 17, 2003.

13. Order of 12/13/00 at pp. 2-3.

14. See footnote 6, above.

15. This Order was issued to give guidance to the parties. It was not dispositive of the interconnection issues, and it did not have any precedential effect. Order of 7/26/02 at p. 8.

North Hartland has withdrawn its request(s) for approval of a Rule 4.100 contract in this case; thus, the issue concerning calculation of "avoided cost rate" and the issue concerning applicability of a FERC open access transmission tariff to Rule 4.100 contracts are not now before us. Similarly, because North Hartland has withdrawn its request for approval of an interconnection agreement in this case, questions about the location of the point of interconnection, and the applicability of a FERC open access transmission tariff to transmission of the facility's power over a portion of the wire(s) extending between the facility and CVPS' Quechee substation are not now before us.¹⁶

The Hearing Officer's proposal for decision regarding the requested approval to transfer the facility from the Trustee to North Hartland and the requested CPG has addressed the issues related to the two remaining petitions in this docket.

Preliminary Matters

The Hearing Officer's proposal for decision was issued on December 5, 2002, with comments due on or before December 16, 2002.¹⁷ Both the Department and CVPS timely filed their comments with the Board. We have considered these comments in connection with our determination today to adopt the Hearing Officer's recommendations.

On December 17, 2002, a letter from Mr. Carey to the Board members was received at the Board by fax, and on December 18, 2002, an e-mail from Mr. Carey to the Clerk of the Board was received by the Clerk. We hold that these communications are not properly filed comments on the Hearing Officer's proposal for decision. First, these communications were filed after the filing deadline. Second, these communications were made by Mr. Carey, and not by Vermont counsel representing North Hartland, even though Mr. Carey had stated in his filing of

16. CVPS' proposed interconnection agreement was filed in response to North Hartland's request for approval of an interconnection agreement, and not as an independent matter. Since North Hartland has withdrawn its request for our approval of an interconnection agreement in this docket, we need not act upon the CVPS filing.

The Hearing Officer's interim order of December 28, 2001, included a conclusion concerning the location of the point of interconnection between the facility and CVPS, however, that issue remained in dispute. Order of 7/26/02 at p. 8.

17. See letter of Peter Meyer, 12/5/02, Public Service Board Rule 2.207 and VRCP 6(a).

August 19, 2002, that North Hartland would present further filings through Vermont counsel, as required by the Hearing Officer's Order of July 26, 2002.

Even if we were to accept Mr. Carey's December 17 and 18, 2002, communications as properly filed, we would reject the substantive arguments that he presents therein for the reasons stated below. First, we specifically reject Mr. Carey's assertion that the Hearing Officer's proposal for decision is wrongfully "discriminatory." While the December 17 and 18, 2002, communications are replete with accusations of bias, no actual examples of inappropriate actions by the Hearing Officer are cited. Although Mr. Carey objects to the Hearing Officer's "omission of material facts relevant to his proposal," Mr. Carey fails to reference any "material facts" that the Hearing Officer omitted. Mr. Carey does not provide a single specific example of bias or partiality on the part of the Hearing Officer, nor does Mr. Carey detail any specific actions by the Hearing Officer to support his claim that the Hearing Officer ignored "the Board's well established QF principles and practices for 20 years." We will not speculate as to the particulars underlying Mr. Carey's assertions, and our review of the record in this case has not revealed any instances of bias or undue discrimination against any party by the Hearing Officer.

Mr. Carey's December 17 and 18, 2002, communications are not responsive to the findings made in the proposal for decision. Instead, in these communications, Mr. Carey simply criticizes the Hearing Officer for granting the relief that he (Mr. Carey) sought in his petition requesting issuance of a CPG. A party appearing before the Board pro se is responsible for knowing and abiding by the applicable rules of practice, including the Vermont Rules of Civil Procedure ("VRCP").¹⁸ In light of the above discussion, we specifically direct Mr. Cary, and the other parties here, to the provisions of VRCP 11, which concerns signing of pleadings motions, and other papers , as well as representations made to the tribunal, and sanctions.

Requiring Vermont Counsel

We next address the inference in Mr. Carey's December 17 and 18, 2002, communications that the Hearing Officer's order directing North Hartland to be represented by

18. Public Service Board Rules 2.201(B) and 2.103

Vermont counsel (rather than Mr. Carey) was improper.¹⁹ The record in this docket reveals that the Hearing Officer's order concerning North Hartland's representation by counsel was made in the context of a ruling on the Department's Motion to Require Representation by Counsel. In its motion, the Department asserted that:

Mr Carey, as representative of NHL: presents requests for PSB action that do not meet the legal standard for a motion; fails to appreciate the legal effects of different types of documents; misrepresents the intent and character of pleadings filed by NHL; makes inaccurate and unfounded legal arguments; makes inappropriate filings; and by virtue of the foregoing, imposes undue burdens on opposing parties and the Board, and causes unnecessary delay and difficulty in reaching resolution of the issues presented in this matter.²⁰

In granting the Department's motion, the Hearing Officer provided a detailed discussion of the facts and reasoning upon which his ruling was based, and he specifically addressed North Hartland's filed objection to the Department's motion. The Hearing Officer determined that, in accordance with Public Service Board Rule 2.201(B), Mr. Carey should be denied permission to represent North Hartland because "continued representation of NHL by Mr. Carey will unnecessarily prolong this proceeding and it will result in inadequate exposition of factual or legal matters."²¹ The Hearing Officer's reasons for this conclusion were supported by facts in the record of the docket, and included the following:

"Mr. Carey's filings with the Board typically are so lengthy and confusing that it is impossible to determine with particularity whether Board action is being requested, and if so, what that specific action might be."²²

"Mr. Carey has not demonstrated an ability to respond appropriately to Hearing Officer requests."²³

19. Letter of Rober L. Carey, Jr., filed December 17, 2002.

20. Motion to Require Representation by Counsel, 5/3/02, at p. 2.

21. Tr. 7/26/02 at p. 4

22. *Id.*

23. *Id.* at p. 5

"Mr. Carey does not understand how to proceed in a Board case . . . [and demonstrates] lack of understanding about Board policies and procedures necessary to bring this docket to conclusion."²⁴

"On numerous occasions, Mr. Carey has evidenced a lack of consideration for the process applicable to adjudication of NHL's petitions, and a lack of consideration for the other participants in this case. "²⁵

Review of the record shows that the Department's motion was well justified and that the Hearing Officer acted reasonably in granting it. We, therefore, conclude that the Hearing Officer's decision to grant the Department's Motion to Require Representation by Counsel does not evidence any improper action on the part of the Hearing Officer. The fact that the Department's motion was granted over North Hartland's objection does not mean that North Hartland suffered unjust discrimination, and there is no reason apparent in the record of this case that it should be confused with such.

We further note that North Hartland did not request the Hearing Officer to reconsider the ruling requiring North Hartland to be represented by Vermont counsel, nor did North Hartland seek to appeal that ruling to the Board. Rather, in a filed response to that ruling Mr. Carey specifically stated: "*NHL shall retain competent counsel and notify the Board*" (emphasis

24. *Id.* at p. 6. Also, in conjunction with this finding, the Hearing Officer cites a letter from Mr. Carey to the Board dated May 1, 2002, in which he concedes that "(w)e agree NHL does not understand the complexity and legal procedures of this Board Docket." *Id.*

25. *Id.* at p. 7. In connection with this conclusion, the Hearing Officer noted: "Mr. Carey attributes revenge as the motivation for the DPS's filing regarding NHL's *pro se* representation: 'It is apparent from his writings that Mr. Commons [counsel for the DPS] is upset and not thinking clearly. This revengeful attack is because we complained to FERC and his superiors about his misbehavior, abuse of a trusted position, a refusal to perform a clear duty imposed by Rule, and a general a (sic) lack of knowledge and experience in power industry. The lashing out in the motion is clearly revenge, no question about it. We do not intend to seek sanctions or file a complaint with the Bar at this time. But we shall take action if he continues to tortiously interfere with our business; for example his unjustified motion in opposition to an extension of time for NHL to make certain license filings with FERC.' Such allegations by Mr. Carey, which border on being threats, are totally inappropriate in this or any other Board proceeding." Procedural Order of 7/26/02 at p. 7, footnote 8.

added).²⁶ To date, the Board has not received such notice from North Hartland, nor has a notice of appearance by counsel for North Hartland been filed with the Board. We will not speculate about why North Hartland still has not fulfilled its promise to obtain counsel of record in this proceeding. However, we observe that Mr. Carey continues to send communications to the Board on behalf of North Hartland in complete disregard of both the order requiring North Hartland to be represented by counsel in this proceeding, and his own avowal that such would be done.²⁷

The Petition for Issuance of a CPG

We agree with the Hearing Officer that we should issue a CPG to North Hartland under 30 V.S.A. § 231. We also agree that it is appropriate for our order issuing the CPG to include the conditions recommended by the Hearing Officer. North Hartland filed a petition specifically requesting that the Board issue it a CPG under 30 V.S.A. § 231 with *de minimis* regulation, and it joined in a stipulation with the Department, filed with the Board, in which it "agreed to accept a CPG and limited regulation by the Board . . ."²⁸ To date, North Hartland and the Department have neither withdrawn, nor filed with the Board any modification(s) to, that stipulation. Accordingly, we conclude that the stipulation as filed on April 23, 2001, still is in effect.²⁹

In the stipulation filed by North Hartland and the Department on April 23, 2001, they acknowledged that they had different positions concerning Board jurisdiction to regulate North Hartland's ownership and operation of the facility, but they "agreed to suspend their dispute regarding the extent of the Board's jurisdiction over NHL and NHL has agreed to accept a CPG

26. NHL's Answer to Hearing Officer's Procedural Order, And Order Regarding Petitions for a Certificate of Public Good & Certificate of Consent, filed August 19, 2002, at p. 1.

27. We note that on January 28, 2003, the Board received from Mr. Carey a somewhat confusing communication regarding a FERC filing pertaining to the facility.

28. Stipulation and Agreement between NHL and the Department filed April 23, 2001, at page 10 of 12.

29. On May 17, 2002, the Department suggested that we withhold issuing the CPG and the approval to transfer the facility until such time as an interconnection agreement was executed. However, on September 19, 2002, the Department recommended that we proceed with action on the stipulations notwithstanding the status of execution of an interconnection agreement. Letter of Geoffrey Commons, 5/17/02, at p. 1; Letter of Geoffrey Commons, 9/19/02.

and limited regulation by the Board . . ."³⁰ The stipulation goes on to describe the *de minimis* regulation by listing particular filings that North Hartland will and will not be obligated to make with the Board.³¹ The stipulation also includes the following provision:

"If the Board does not approve this Stipulation in its entirety, without modification, the Stipulation shall be null and void, of no further force and effect and all negotiations and proceedings connected therewith shall be without prejudice to the rights of NHL or the Department."

In his proposal for decision, the Hearing Officer recommended that the CPG be subject to the following conditions, each of which either appears in the stipulation between the Department and North Hartland, or articulates a provision of law and/or regulation that is applicable to operation of the facility independent of any stipulation, as noted in the citations below.³²

- (a) The Project shall be operated and maintained in accordance with the evidence submitted in this proceeding.³³
- (b) NHL shall not operate the Project until an interconnection agreement with CVPS, or other Vermont utility if so interconnected, has been reviewed and approved by the Board.³⁴
- (c) NHL shall not sell the production of the Project to VEPPi or any Vermont utility pursuant to a long-term and/or levelized power sales contract until said contract has been reviewed and approved by the Board. If said contract includes long-term and/or levelized power sales rates, those rates shall only be available if the Board finds that the project satisfies the substantive criteria of 30 V.S.A § 248(b)

30. Stipulation and Agreement between NHL and the Department filed April 23, 2001, at page 10 of 12.

31. *Id.* at page 11 of 12.

32. Stipulation and Agreement between the Department and NHL filed April 23, 2001; 30 V.S.A. § 231; 30 V.S.A. § 209(a)(8); Public Service Board Rule 4.100; 18 C.F.R. § 292.306.

33. Stipulation and Agreement between the Department and NHL filed April 23, 2001, pp. 7 of 12 through 10 of 12.

34. 18 C.F.R. § 292.306; 30 V.S.A. § 209(a)(8); Public Service Board Rule 4.106.

pursuant to Board Rule 4.104 (I).³⁵

(d) The certificate of public good shall not be transferred without prior approval of the Board.³⁶

(e) NHL shall notice the Board of its filings at FERC related to its FERC license, its Exempt Wholesale Generator status, and any market-based wholesale rates for the Project's electricity production.³⁷

Of all the parties in this docket, only Mr. Carey has questioned whether these conditions nullified the stipulation.³⁸

We have reviewed each of the conditions and we conclude that none of these proposed conditions result in a modification of the stipulation that would render the stipulation null and void. As set forth in detail above, *each condition* either appears in the stipulation between the Department and North Hartland, or articulates a provision of law and/or regulation that is applicable to operation of the facility independent of any stipulation. While it may be redundant to condition the CPG upon conformance with independently applicable provisions of law and/or regulation, we believe that, in this case, including such conditions is an appropriate way to provide clarifying information to North Hartland concerning requirements that must be satisfied prior to the operation of the facility. Such clarification is especially appropriate with an entity such as North Hartland, whose representative before us, Mr. Carey, has both demonstrated and confessed a fundamental lack of understanding of Board requirements and procedures.³⁹

We also believe that it is appropriate to apply the comments on the proposal for decision filed by the Department and by CVPS to issuance of the CPG here. In its comments, the Department states its support for Board adoption of the proposal for decision, and it suggests that the language of the proposed CPG be corrected to conform with the language of the proposed order: i.e., both the proposed order and the CPG should require review and approval by the

35. 30 V.S.A. § 209(a)(8); Public Service Board Rule 4.100; Public Service Board Rule 4.104(I).

36. 30 V.S.A. § 231(a).

37. Stipulation and Agreement between the Department and NHL filed April 23, 2001, at p. 11 of 12.

38. Letter of Robert L. Carey, Jr., filed December 18, 2002; E-mail of Robert L. Carey, Jr., to Susan Hudson, dated December 17, 2002.

39. *See* footnote 19, above.

Board of any "long-term and/or levelized power sales contract."⁴⁰ In its comments on the proposal for decision, CVPS states that it does not object to issuance of the proposed CPG. CPVS further points out that the stipulations in this case make clear that they (the stipulations) are non-precedential except as necessary for their implementation; CVPS, therefore, requests the Board to clarify that the conditions applicable to the CPG in this case "will not be precedential with respect to matters involving other generators that propose to interconnect with the facilities of a Vermont utility."⁴¹ We will correct the wording of the CPG as suggested by the Department, and we here state that the conditions applicable to the CPG here are not intended to be precedential with respect to matters involving other generators that propose to interconnect with the facilities of a Vermont utility.

The Petition for Approval to Transfer the Facility

We agree with the Hearing Officer that we should issue a certificate of consent for transfer of the facility from the Trustee to North Hartland. We also agree that it is appropriate for our order issuing such approval to include the conditions recommended by the Hearing Officer.

On March 28, 2001, the Department and the Trustee filed a stipulation with the Board agreeing that the Board should issue, pursuant to 30 V.S.A. § 109, a certificate of consent for the transfer of the facility from the Trustee to North Hartland.⁴² The stipulation explicitly stated that the Trustee and the Department disagreed about whether a certificate of consent from the Board was required, but that they had agreed to suspend their dispute concerning the extent of Board jurisdiction over the requested transfer.⁴³ To date, the Trustee and the Department have neither withdrawn, nor filed with the Board any modification(s) to that stipulation. Accordingly, we conclude that the stipulation as filed on March 28, 2001, still is in effect.

40. Letter of Geoffrey Commons, filed December 16, 2002.

41. Letter of Morris L. Silver, filed December 16, 2002, at p. 2.

42. Stipulation filed March 28, 2001, at p. 5

43. *Id.* at p. 4.

The comments on the Hearing Officer's proposal for decision filed by the Department indicate that it supports Board adoption of the proposal for decision.⁴⁴ The comments on the Hearing Officer's proposal for decision filed by CVPS indicate that CVPS does not object to issuance of the certificate of consent.⁴⁵ The Trustee did not file comments on the proposal for decision, nor did the Trustee file an objection to the Board issuing the requested certificate of consent.

Finally, the conditions proposed by the Hearing Officer articulate provisions of law and/or regulation that are applicable to operation of the facility independent of any stipulation.⁴⁶ While it may be redundant to condition the certificate of consent for transfer of the facility upon conformance with independently applicable provisions of law and/or regulation, we believe that, in this case, including such conditions is an appropriate way to provide clarifying information to North Hartland concerning requirements that must be satisfied prior to the operation of the facility, especially given North Hartland's apparent lack of understanding of such regulatory requirements.

Conclusion

For the reasons set forth in our discussion, and in the Hearing Officer's discussion, above, we adopt the recommendations that the Hearing Officer presented in his proposal for decision. The parties have entered into stipulations agreeing to Board issuance of the CPG and Board approval to transfer the facility. FERC has issued an order approving a license transfer for the facility to North Hartland, and FERC has issued findings that: (i) the sale and transfer of FERC Project P2816-007 to North Hartland is in the public interest; (ii) that North Hartland is qualified to hold the license, and; (iii) that North Hartland is qualified to operate the property under the license.⁴⁷ Because of these FERC determinations and because transfer of the facility from the bankruptcy Trustee to North Hartland will provide benefits to the state by bringing a renewable

44. Letter of Geoffrey Commons, filed December 16, 2002.

45. Letter of Morris L. Silver, filed December 16, 2002, at p. 1.

46. Stipulation and Agreement between the Vermont Department of Public Service and Gleb Glinka, Trustee, filed March 28, 2001; 18 C.F.R. § 292.306; 30 V.S.A. § 209(a)(8); Board Rule 4.100; Public Service Board Rule 4.106; Public Service Public Service Board Rule 4.104(I).

47. See Findings number 15 and 16 in the Hearing Officer's proposal for decision, above.

energy facility closer to production, we will not look behind the stipulations here. Accordingly, we conclude that transfer of the facility from the Trustee to North Hartland and North Hartland's operation of the facility, if conditioned as described above, will promote the general good of Vermont pursuant to 30 V.S.A. §§ 109 and 231.

VI. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The findings, conclusion, and recommendations of the Hearing Officer are adopted.
2. The issuance of a certificate of consent to Gelb Glinka, Chapter 7 Trustee in Bankruptcy of Vermont Electric Generation & Transmission Cooperative, Inc., pursuant to 30 V.S.A. § 109 to transfer a hydroelectric generation facility in North Hartland, Vermont, to North Hartland, LLC ("North Hartland") will promote the general good of the state, subject to the following conditions:
 - (a) North Hartland shall not operate the Project until an interconnection agreement with Central Vermont Public Service Corporation ("CVPS"), or other Vermont utility if so interconnected, has been reviewed and approved by the Board.
 - (b) North Hartland shall not sell the production of the Project to VEPP, Inc. ("VEPPI") or any Vermont utility pursuant to a long-term and/or levelized power sales contract until said contract has been reviewed and approved by the Board.
3. The issuance of a certificate of public good for North Hartland, LLC to own and operate the North Hartland Hydroelectric Plant, and for *de minimis* regulation, will promote the general good of the state, subject to the following conditions:
 - (a) The Project shall be operated and maintained in accordance with the evidence submitted in this proceeding.

(b) North Hartland shall not operate the Project until an interconnection agreement with CVPS, or other Vermont utility if so interconnected, has been reviewed and approved by the Board.

(c) North Hartland shall not sell the production of the Project to VEPPi or any Vermont utility pursuant to a long-term and/or levelized power sales contract until said contract has been reviewed and approved by the Board. If said contract includes long-term and/or levelized power sales rates, those rates shall only be available if the Board finds that the project satisfies the substantive criteria of 30 V.S.A § 248(b) pursuant to Board Rule 4.104 (I).

(d) The certificate of public good shall not be transferred without prior approval of the Board.

(e) North Hartland shall notice the Board of its filings at FERC related to its FERC license, its Exempt Wholesale Generator status, and any market-based wholesale rates for the Project's electricity production.

Dated at Montpelier, Vermont, this 11th day of February, 2002.

s/Michael H. Dworkin)

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PUBLIC SERVICE

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s/David C. Coen)

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BOARD

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OF VERMONT

s/John D. Burke)

OFFICE OF THE CLERK

FILED: February 11, 2003

ATTEST: s/Susan H. Hudson

Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.